

Remarks

This pending application is a reissue continuation of 09/776,394, which is a reissue application of U.S. Patent No. 5,865,846.

Prior to entry of this paper, claims 4-9, 13, 30, 31, and 33-37 were pending in the application. Upon entry of this paper, claims 4-9, 13, 30, 31, 33-35, and 37 will be pending in the application. This paper cancels claim 36 without prejudice to or disclaimer of the subject matter therein. This paper amends independent claim 33 to include the subject matter of claim 36. Accordingly, claim 33 should also be in condition for allowance.

Reconsideration of the presently pending claims is respectfully requested in light of the following remarks.

Reissue Oath/Declaration

The Office Action indicates that the claims stand rejected as being based upon a defective oath or declaration. Pg. 2. It also indicates that receipt of an appropriate supplemental oath will overcome the rejection. Applicants will file the supplemental oath after the Office indicates that all the claims are allowable over the prior art.

Compliance with 35 U.S.C. § 102

The Office Action rejects claims 33, 35, and 37 as being anticipated by U.S. Patent No. 5,484,437 to Michelson. This paper amends independent claim 33 to include the subject matter of dependent claim 36. Dependent claim 36 is not rejected based upon prior art. Accordingly, claim 33 should now be allowable over the prior art.

For the convenience of the Examiner, claim 33 is reproduced below to show the changes introduced in this paper.

33. A method for inserting an intervertebral disc prosthesis having a first and second surface, the method comprising:

after removal of an intervertebral disc, forming a first indentation in a first endplate of a first vertebral body, the first indentation having a middle portion and a circumferential rim such that the middle portion is deeper into the first vertebral body than any part of the circumferential rim;

fixedly mating the first surface to the first indentation of the first endplate of the first vertebral body, the first surface having a shape that conforms to the first indentation; and

fixedly mating the second surface to a second vertebral body,
wherein the first and second surfaces are capable of relative
movement after being mated to the first and second vertebral bodies,
respectively.

Applicants respectfully request that the Examiner withdraw the rejection of claim 33 and its associated dependent claims.

Conclusion

In view of the foregoing remarks, all of the claims currently pending in this application are in a condition for allowance over the prior art. Once the Office formerly indicates that all the claims are allowable over the prior art, Applicants will submit a supplemental oath or declaration.

A telephone interview is respectfully requested to discuss any remaining issues in an effort to expedite the allowance of this application. The Office Action contains characterizations of the claims and the related art of which Applicants do not necessarily agree. Unless expressly noted otherwise, Applicants decline to subscribe to any statement or characterization in the Office Action.

Respectfully submitted,



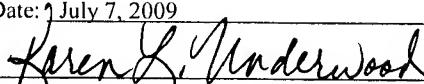
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I hereby certify that this correspondence is being filed with the United States Patent and Trademark Office via EFS-Web on the following date.

Date: July 7, 2009



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